

Conflict of Interest FAQ's

<http://www.hud.gov/offices/omhar/readingrm/coifaqs.doc>

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(changes from previous version are in bold)

RESTRICTED PERSONS

1. Q: I am filling out Form 2.1 (PAE Conflict of Interest and Civil Rights Action Certifications - Standard Form) and I need to know whether agencies and people that will *not* perform work under the PRA are restricted persons?

A: All business legal entities that are under the control of the PAE, regardless of whether they will perform work pursuant to the PRA, must be reported as restricted persons. All legal entities that are in control of the PAE must also be reported as restricted persons. Finally, all management officials, boards of directors and individual board members of the PAE and entities that exercise control over the PAE must be reported, regardless of whether they will perform work pursuant to the PRA.

2. Q: What is the definition of "management official"?

A: A management official is one who has charge of the entity and control of its business, or of its branch establishments, divisions or departments, and who is vested with a certain amount of discretion and independent judgment.

3. Q: Is a law firm hired by a PAE a restricted person?

A: Yes, if the firm will perform services for a PAE under a PRA.

4. Q: Are Community Builders or ITAG/OTAG recipients restricted persons?

A: No.

5. Q: Do I have to list the social security numbers of management officials or of other individuals in my list of restricted persons?

A: PAEs do not have to list social security numbers of individuals, only TIN's of "business restricted person[s]."

6. Q: Are board members restricted persons?

A: Yes, as individuals with the ultimate control of an organization, board members are restricted persons. Please note that board members only need to report in their individual capacity. For example, if Joe Smith is on the board of the Springfield Housing Finance Agency and on the board of Jimmy's Widgets, Inc., neither Smith nor the Springfield HFA needs to report on the civil rights issues of Jimmy's Widgets, Inc., unless Smith is named individually in the action.

PAE CONFLICTS OF INTEREST

7. Q: Can a PAE invest in a property that they are restructuring?

A: Investing in a property that the PAE is restructuring is a conflict of interest that would require a waiver from OMHAR.

8. Q: We are the PAE restructuring a property and we are interested in providing some of the financing for the owner. Are we prohibited because of conflict of interest rules?

A: PAEs can provide financing as part of a restructuring plan. However, PAE's must comply with the terms of §5.3 of the PRA whenever they proposed such financing. Additionally, the proposal of such financing will cause OMHAR to review the deal as a nonconforming transaction. Section 5.3 of the PRA requires that whenever a PAE, Related Entity of the PAE or an Affiliate of the PAE provides financing in connection with the restructuring of a property, the PAE must demonstrate to OMHAR's satisfaction that the financing is the best available within the context of savings for the FHA Insurance Fund and Section 8 Assistance. When financing of this type is included as part of a restructuring plan the PAE must include with its proposal to OMHAR the certifications and narratives specified in PRA §5.3.

9. Q: My organization is currently the section 8 contract administrator on an asset that OMHAR is considering assigning to us. Is this a conflict of interest?

A: Being a section 8 contract administrator does raise conflict of interest issues and must therefore be reported to OMHAR. In the absence of other issues, this conflict is manageable. Where the PAE is the section 8 contract administrator, OMHAR will ask the PAE to agree to hire an independent inspector to perform the PCA and to agree not to allow staff that has performed section 8 contract administration functions to perform restructuring functions on the asset.

10. Q: What do we need to disclose as competing properties?

A: PAE's and their restricted persons must disclose any ownership interest in any assisted property where the property serves the same population as the asset to be restructured and where the property is within one mile of the property to be restructured.

11. Q: Can a PAE buy a property that has entered the M2M program?

A: While under contract with OMHAR, PAE's cannot purchase any interest in a property that is undergoing or that is about to undergo M2M restructuring. To do so would constitute a conflict of interest. While we will not rule it out completely, we do not anticipate granting a waiver to allow such a purchase by a PAE. After the restructuring is complete, if the PAE has not participated in the restructuring process, the PAE may purchase the property through a full, open and competitive competition.

12. Q: My organization currently services the loan on the property. Does this constitute a conflict of interest? Will OMHAR waive the conflict if there is a conflict?

A: Servicing a mortgage creates a conflict of interest because the PAE would receive income related to the loan on the property while potentially restructuring the loan on the property. The PAE could be placed in a position where they must choose between losing or diminishing the income from servicing the loan and the best interests of the property, OMHAR and HUD.

OMHAR has considered and rejected waiver requests by servicing PAEs because the servicing PAE would have a direct financial interest in the mortgage on the property and because of the availability of PAEs that do not have any financial interest in the properties. The availability of PAEs with no preexisting financial interests in the properties makes it extremely unlikely that OMHAR would grant a waiver to allow a servicing PAE to restructure a property where the potential PAE services the loan. Upon disclosure of such a conflict of interest, the property will be reassigned to a PAE that does not have any interest in the property.

PAE SUBCONTRACTOR CONFLICTS OF INTEREST

13. Q: If a PAE engages a subcontractor to perform M2M services, may the subcontractor simultaneously perform M2M services for an owner of an OMHAR property, an entity engaged in purchasing an OMHAR property or a financial institution providing financing to either an owner or potential owner of an OMHAR property?

A: Yes. However, the PAE is responsible for ensuring that the subcontractor develops, and remains in compliance with, a conflicts prevention plan acceptable to OMHAR, to assure compliance with OMHAR's ethical standards and requirements and ensure the independence of the subcontractor, the confidentiality of nonpublic OMHAR information and the integrity of the PAE, the subcontractor and OMHAR. Generally, such a plan must require the complete segregation of the PAE subcontractor employees engaged in M2M work for the PAE and other employees of the subcontractor performing M2M services for property owners or financiers. Such segregation must include the segregation of electronic files. Further, such a plan must make clear that the subcontractor can never perform M2M services for another party on a project for which it performed M2M services for OMHAR through a PAE. Finally, the plan must make it clear that the

subcontractor cannot provide M2M services for anyone other than OMHAR or a PAE in any state in which the subcontractor performs services.

STATE FINANCED PROPERTIES

14. Q: Can the state that provided the financing to an M2M property serve as the PAE for that property?

A: Public PAEs are not generally eligible to restructure properties where the state is the mortgagee. A PAE that is currently the mortgagee of an OMHAR property has a financial interest in the property which constitutes a conflict of interest. OMHAR may waive such conflicts of interest “only when, in light of all relevant circumstances, the interests of [OMHAR] in the PAE’s ... participation outweigh the concern that a reasonable person may question the integrity of [OMHAR’s] operations.” 24 CFR §401.310(c).

OMHAR has considered and rejected waiver requests by mortgagee/PAE’s because the mortgagee/PAE would have a direct financial interest in the property and because of the availability of PAE’s that do not have any financial interest in the properties. The availability of PAEs with no preexisting financial interests in the properties makes it extremely unlikely that OMHAR would grant a waiver to allow a PAE/mortgagee to restructure a property where the state holds the property’s mortgage. Accordingly, public PAE’s are not generally eligible to restructure properties where the state/PAE is the mortgagee. Upon disclosure of such a conflict of interest, the property will be reassigned to a PAE that does not have any interest in the property.

However, if the state’s financial interest in the property terminated prior to the date on which the PAE signed its PRA, it is not likely that a conflict of interest will be present. Accordingly, such PAEs will be assigned the properties for restructuring.

Finally, the facts will be evaluated on a case by case basis if the state is no longer the mortgagee but the state’s interest in the property terminated after the date on which the PAE signed its PRA. OMHAR will notify PAEs that a conflict of interest exists when the PAE discloses such an interest in the property and the PAE will be given 10 days to respond with a waiver request (see 24 CFR part 401.310(c)). If the PAE chooses not to seek a waiver, or if a waiver request is denied, the asset will be reassigned.

PREVIOUS INVOLVEMENT OF LAW FIRMS WITH OMHAR PROPERTIES

15. Can a law firm that participated in the issuance of state or local bonds or that had any involvement with the financing or other aspects of a property later provide legal services for a PAE regarding that property?

No. Previous involvement with a property, either on the part of the PAE or its counsel, creates a conflict of interest. Such a conflict of interest must be waived by OMHAR prior

to beginning work on the property. At this time OMHAR does not anticipate waiving such conflicts of interest.